

UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

In the Matter of: TERESA ZOLTANSKI

FAA Order No. 2002-12

Docket No. CP00NM0010

Served: April 26, 2002

DECISION AND ORDER¹

Complainant has alleged that Respondent Teresa Zoltanski entered a sterile area of the Denver International Airport on October 21, 1999, without submitting to the screening of her property in accordance with the procedures being applied to control access, a violation of 14 C.F.R. § 107.20.² Complainant seeks a civil penalty of \$250.

¹ The Administrator's civil penalty decisions, along with indexes of the decisions, the rules of practice, and other information, are on the Internet at the following address: <http://www.faa.gov/agc/cpwebsite>. In addition, there are two reporters of the decisions: Hawkins' Civil Penalty Cases Digest Service and Clark Boardman Callaghan's Federal Aviation Decisions. Finally, the decisions are available through LEXIS and WestLaw. For additional information, see the website.

² Section 107.20, entitled "Submission to screening," provides as follows: "No person may enter a sterile area without submitting to the screening of his or her person and property in accordance with the procedures being applied to control access to that area under § 108.9 or § 129.25 of this chapter." 14 C.F.R. § 107.20.

Section 108.9(c) provides, in relevant part, as follows: "[E]ach certificate holder required to conduct screening under a security program shall use the procedures included, and the facilities and equipment described, in its approved security program for detecting explosives . . . to inspect each person entering a sterile area at each preboarding screening checkpoint in the United States for which it is responsible, and to inspect all accessible property under that person's control." 14 C.F.R. § 108.9(c).

Section 129.25 does not apply here. It applies to foreign air carriers, and United Airlines, a domestic air carrier, was responsible for the security checkpoint at issue. (Tr. 38.)

Section 107.1(6) provides, in relevant part, that a "sterile area" is "an area to which access is controlled by the inspection of persons and property in accordance with an approved security program." 14 C.F.R. § 107.1(6).

The ALJ found that Complainant failed to prove the violation and dismissed the complaint.³

Both parties filed notices of appeal. Zoltanski's appeal is dismissed because she failed to perfect her appeal by filing an appeal brief, as required by 14 C.F.R. § 13.233(d)(2). Complainant's appeal is examined below.

I.

At the hearing, the parties presented conflicting versions of the incident. Complainant's and Zoltanski's versions are summarized separately.

A. Complainant's Case

Zoltanski went to the airport to pick up an arriving passenger. (Tr. 199.) At the checkpoint, she passed through the metal detector (*i.e.*, the magnetometer) without setting off the alarm, and her purse successfully passed through the X-ray machine. (Tr. 74, 88, 89.)

Security Screener Stephanie Rose testified that she then randomly selected Zoltanski's purse for explosives trace detection (ETD) screening. (Tr. 63, 71.) At the time of the incident, the applicable security program required random ETD screening. (Tr. 40, 52-53; Respondent's Exhibit 11, G.3.a(1).)

Security Screener Rose testified that she made it clear to Zoltanski that ETD screening was necessary, although she may not have used the exact word "necessary." (Tr. 63, 64, 66, 292.) Zoltanski kept insisting that she did not want to have ETD screening done and that it was not a requirement. (Tr. 73.) Zoltanski was hostile and very rude. (*Id.*)

³ Portions of the attached ALJ decision have been redacted for security reasons under 49 C.F.R. Part 1520.

Security Screener Rose called for Checkpoint Supervisor Harold Avila. (Tr. 83.)

According to Avila's testimony, Zoltanski told him that she did not want her purse checked because it had gone through the X-ray machine already and she did not want anything in her purse broken or stolen. (Tr. 84, 89.) Avila told her that ETD screening was FAA policy. (Tr. 84.) Zoltanski said that she was picking up someone important and that she knew the governor, other high officials, and airport policies. (Tr. 85.) Avila told her that if she did not want her bag checked for explosives, she had to leave and go back through the metal detector. (Tr. 85-86.) Avila testified that he never used the words "consensual" or "optional" with Zoltanski. (Tr. 86.) Further, he testified, he did not say anything to her that could have given her the impression that she had the right to go into the sterile area without ETD screening. (*Id.*) He testified that Zoltanski requested to speak with his supervisor. (Tr. 90.) He told her to wait by the checkpoint while he went to get his supervisor. (Tr. 90, 96.) Zoltanski did not wait, however. (Tr. 85, 86.) While Avila was getting his supervisor, Zoltanski went down the escalator to the trains that would take her to the gates. (*Id.*)

Checkpoint Supervisor Avila went to the office of Shift Supervisor Patrick Badu, and told him that Zoltanski had refused screening and wanted to speak to him. (Tr. 99.) As Badu was leaving his office, he saw Zoltanski going down on the escalator. (*Id.*) Badu called to Zoltanski to come back so that they could finish screening her purse, but she did not comply. (*Id.*) He followed her down to the train platform, where he told her, "Ma'am, please, we need to screen your bag. This is an FAA requirement. You can't board the train." (*Id.*) Zoltanski responded, "You guys have no authority. You can't stop me from boarding the train. You are a bunch of crooks." (*Id.*) She kept telling him

that the bag had already passed through the X-ray machine and there was nothing to check. (Tr. 102.) He told her several times to go back, but she did not comply. (*Id.*) When the train came, Zoltanski boarded it, and Badu followed her to the gates, keeping her in view at all times, per FAA procedures. (Tr. 100, 105.) Zoltanski got off the train, and the police stopped her on the concourse. (Tr. 101.)

An airport police officer who responded to the incident testified that Zoltanski refused to cooperate in any way. (Tr. 115.) Zoltanski refused to provide the police with her identification. (*Id.*) The police officer told Zoltanski that they were going to find out who she was and they were going to check her bag. (*Id.*) The officer told her that she would be arrested if she did not cooperate. (*Id.*) When the officer attempted to take her purse, Zoltanski was clutching it. (*Id.*) There was an initial struggle, and then Zoltanski released it. (*Id.*) According to the airport police officer, Zoltanski was extremely arrogant, aloof, and difficult. (Tr. 115, 123.) She talked repeatedly about how important she was (Tr. 123), and she threatened the police that they would be sorry because she was going to make telephone calls. (Tr. 115, 123.) The police released her after they searched her purse and found nothing threatening inside. (Tr. 119.)

B. Zoltanski's Case

Zoltanski testified as follows. She went to the airport because she was putting on a continuing legal education class and needed to meet the keynote speaker, who was arriving on a flight. (Tr. 199.)

According to Zoltanski, after she successfully passed through the metal detector and her purse successfully passed through the X-ray machine, a screener asked her if she would consent to explosives testing of her purse. (Tr. 201, 202.) The only time Zoltanski

had heard of testing for explosives involved a lawyer who left his briefcase in a courtroom, and the authorities blew up the briefcase because they thought it contained a bomb. (Tr. 202.) Zoltanski asked how long it would take, and the screener responded that it should not take too long. The screener added that Zoltanski did not have to submit her purse to ETD screening -- it was Zoltanski's choice. (Tr. 203.) Zoltanski declined. (*Id.*) According to Zoltanski, the only thing that was clear to her was that she did not have to take the test if she did not want to. (Tr. 204.) The screening personnel gave Zoltanski her purse back, but they did not tell her that she had to leave the checkpoint and forego entering the sterile area. (Tr. 205.)

Zoltanski denied saying that she did not want her purse stolen, and that she knew the governor and other high officials. (Tr. 246.) She testified that screening personnel did not inform her that she was required to submit to ETD screening. (Tr. 205, 241.) She insisted that they told her it was her choice. (Tr. 203, 205.) She said she had the impression that ETD screening was something that they wanted to try out with her because she was a friendly person,⁴ and she thought that perhaps she was a "guinea pig." (Tr. 205.) She said that no one told her that she could not proceed to the trains to meet her passenger. (Tr. 206.) Zoltanski denied that Avila told her to wait before he walked away from her. (Tr. 249.) Believing that she was free to go, she left the checkpoint and proceeded down the escalator to the trains that would take her to the gate. (Tr. 227, 229.)

Zoltanski testified that when she was on the escalator, she did not hear the shift supervisor yelling to her to come back. (Tr. 250.) Shift Supervisor Badu approached her

⁴ Zoltanski testified that there was a jovial, light-hearted attitude at the checkpoint when Zoltanski came through; everyone was laughing. (Tr. 203.) She stated, "I just kind of like to connect with people when I can. I just -- don't know -- I like people. And sometimes I just connect with them, and it makes my day a little better." (*Id.*)

when she was waiting on the train platform and said something like, "Ma'am, you need to have your bag screened." (Tr. 231.) She thought he meant that her bag needed to go through X-ray screening because he did not say anything about explosives screening. (Tr. 234.) She told him that she did have her bag screened. (Tr. 231.) Badu started talking on his hand-held radio, and she boarded the train. (Tr. 232.) Zoltanski denied that Badu told her she could not board the train. (Tr. 250.) She also denied saying to Badu, "You are a bunch of crooks." (*Id.*)

Zoltanski testified that Shift Supervisor Badu did not identify himself. (Tr. 234-235.) Although she later found out that he was the shift supervisor, she did not realize that he was part of security at the time because he was wearing a maroon jacket while the people at the security checkpoint were wearing blue jackets. (Tr. 235.) She did not see a badge. (*Id.*) Also, she had difficulty understanding him because he spoke accented English. (*Id.*; *see also* Initial Decision at 4.)

According to Zoltanski, Shift Supervisor Badu did not stop her from entering the train, but instead followed her onto the train and sat down, talking on his radio. (Tr. 231, 235.) When Zoltanski got off the train, Badu followed her. They went up the escalators to enter the concourse. (Tr. 231.)

Subsequently, while Zoltanski was on the concourse, Denver police officers came up to her and said, "Stop. You are under arrest." (Tr. 233.) Zoltanski testified that although she did originally refuse to provide identification, she did not do so repeatedly and she did not refuse to cooperate. (Tr. 250-251.)

II.

In his initial decision, the ALJ noted that the parties had presented conflicting accounts of the incident. (Initial Decision at 3.) He stated, "Having observed the witnesses' demeanor and listened to their testimony, I find that each believed in the truth of what he or she stated." (*Id.*)

The ALJ wrote that "Complainant [had to] show that [Zoltanski] tried to circumvent the screening process" to prove that she violated Section 107.20. (Initial Decision at 4.) He found that "the preponderance of the reliable and probative evidence did not suggest that Zoltanski made a deliberate effort to evade screening procedures." (*Id.*) According to the ALJ, once Zoltanski "successfully passed through the X-ray and magnetometer, she believed that she had been cleared to go to the arrival gate to meet her passenger." (*Id.*)

The ALJ stated that "[s]creening officials had explained to her no more than that an ETD screening was optional," and thus, it was understandable that Zoltanski felt she could go to the gates. (Initial Decision at 5.) While the airport signs stated that persons and their property were subject to inspection, they did not state that persons "could be subject to a second stage of screening," and if they refused to undergo it, they could not proceed beyond the checkpoint. (*Id.*) The ALJ concluded that "Zoltanski neither knew nor should have known that she was required to undergo a second layer of screening" (*Id.*)

The ALJ stated that even though the screening personnel's behavior -- especially that of Shift Supervisor Badu -- might have reasonably suggested that the screening process was not over, it was also reasonable for Zoltanski to think that the screening

officials were mistaken or confused. (Initial Decision at 5.) He held that Zoltanski reasonably believed that she had cleared security because she had completed the X-ray machine and metal detector tests and had been told that ETD screening was optional. (*Id.*) The ALJ stated, in addition, that “Zoltanski could have reasonably concluded that Badu was not associated with security at all” because he wore a maroon jacket while “identifiable security personnel wore blue” and because Badu “was not wearing a badge or other marking readily associating him with security.” (Initial Decision at 5.) The ALJ wrote, “In these circumstances Zoltanski was entitled to conclude that she could continue to the gates unimpeded.” (*Id.*)

The ALJ concluded that “I cannot find on this record that Zoltanski knew or should have known that she had not submitted to the entire screening process in effect at the checkpoint” (Initial Decision at 5.) As a result, he dismissed the complaint, and Complainant has appealed.

III.

On appeal, Complainant argues that the ALJ erred in finding that Complainant failed to prove a violation of 14 C.F.R. § 107.20. Complainant’s appeal is granted.

The ALJ erred in holding that it was reasonable for Zoltanski to conclude that the screening process was over and that she was free to proceed to the gates. In light of the ALJ’s factual findings, Zoltanski should have known that security personnel were not satisfied that she had completed screening.

The ALJ found that Checkpoint Supervisor Harold Avila told Zoltanski that “the ETD procedure was FAA policy” after Zoltanski had argued that ETD screening was

unnecessary because her purse had already gone through the X-ray machine. (Initial Decision at 3.) In his findings, the ALJ stated as follows:

[Checkpoint Supervisor Avila] tried to explain how the ETD machine worked and suggested that it would not hurt Respondent's purse (Tr. 221, 243.) Zoltanski insisted that because her purse had already gone through the X-ray, she did not need to have it checked again (Tr. 84). *Avila stated that the ETD procedure was FAA policy* (Tr. 84, 283).

(Initial Decision at 3; emphasis added.) As stated in a previous case, "It is not for Respondent to decide which security procedures are necessary and which are not." In the Matter of Hoedl, FAA Order No. 1992-58 at 6 n.6 (October 16, 1992).

The ALJ also specifically found that Avila told Zoltanski to wait while he went to get his supervisor.⁵ In this regard, the ALJ stated as follows:

[Zoltanski], asserting that she did not want anything out of her purse stolen (Tr. 84), asked to speak to Avila's supervisor (Tr. 66, 99, 283, 287). And in rather rude tones, she declined an ETD inspection (Tr. 65, 73, 88, 203, 204, 243). *Avila told her to wait* (Tr. 90, 96, 283, 287, 290, 294, 300).

(Initial Decision at 5; emphasis added.) An instruction to wait from a checkpoint security official indicates that screening has not been completed. Individuals going through screening must obey the instructions of security officials.

Security lapses may result from the undue amount of time that screening personnel must spend dealing with difficult, uncooperative individuals going through screening. An efficient screening process is imperative to ensure high levels of aviation

⁵ The ALJ found that Avila had told Zoltanski to wait even though he noted that Zoltanski *denied* that she had been told to wait. (Initial Decision at 3.)

security. As a result, everyone going through security must cooperate with the screeners as they implement the screening procedures in place at any given checkpoint.⁶

The ALJ wrote in his decision that no one specifically communicated to Zoltanski that she could not proceed to the gates. (Initial Decision at 5.) Given that Zoltanski had been told to wait, however, what is more important is that no one told her that she could proceed.

The ALJ also erred in determining that Zoltanski reasonably could have concluded that Shift Supervisor Badu was not associated with security, so that Zoltanski was entitled to continue to the gates even after Badu attempted to stop her. The ALJ wrote as follows:

[Zoltanski] could have reasonably concluded that Badu was not associated with security at all. He wore a maroon jacket; identifiable security wore blue (Tr. 235). Further, he was not wearing a badge or other marking readily associating him with security (Tr. 235). In these circumstances, Zoltanski was entitled to conclude that she could continue to the gates unimpeded.

(Initial Decision at 5.) The ALJ's findings in the above-quoted paragraph -- that identifiable security wore blue and that Badu was not wearing a badge -- conflict with his previous findings on page 4 of the Initial Decision that Checkpoint Supervisor Avila, like Badu, wore a maroon blazer and that Badu was wearing a badge.⁷

⁶ See n. 12 on p. 14, quoting the preamble to the final rule adding Section 107.20 to the Code of Federal Regulations.

⁷ A preponderance of the evidence supports the ALJ's finding on page 4 that Checkpoint Supervisor Avila and Shift Supervisor Badu were both wearing maroon jackets. Badu testified that both Avila and he were wearing maroon jackets. (Tr. 108-109.) Security Screener Rose testified, in regard to how Avila got Badu's attention, that "maybe the movement of [Avila's] red coat caught [Badu's] eye. (Tr. 300.) Although Zoltanski, in her reply brief, insists that the videotapes clearly show that the color of Avila's jacket is blue (Reply Brief at 17 n.7), the quality of the videotape is poor and it was difficult to discern the color. When the television's color and brightness were adjusted, however, there appeared to be reddish hints to Avila's jacket. Finally,

A preponderance of the evidence does not support the ALJ's finding that Zoltanski reasonably believed that she had cleared security and did not have to cooperate with Shift Supervisor Badu. Zoltanski had just insisted to the checkpoint supervisor that she did not have to subject her purse to ETD screening, and he responded by saying that it was FAA policy. (Initial Decision at 3.) Zoltanski then rudely refused ETD screening and asked to talk to the checkpoint supervisor's supervisor. (*Id.*) The checkpoint supervisor told her to wait at the checkpoint while he went to get his supervisor. (*Id.*) Zoltanski herself testified that once the checkpoint supervisor was gone, she walked off and went down the escalator to the trains that would take her to the gates. (Tr. 249.) Then a man who, according to Zoltanski's own testimony, was wearing a jacket and carrying a hand-held radio (Shift Supervisor Badu), approached her. (Tr. 231, 235.) Zoltanski testified that Badu said to her, something like, "Ma'am, you need to have your bag screened." (Tr. 231.) Given this context, it was not reasonable for Zoltanski to conclude that the man who approached her on the train platform (Shift Supervisor Badu) was not associated with security. As a result, she should have stopped and waited until the matter was resolved.⁸

The ALJ stated that it was reasonable for Zoltanski to think that security personnel were mistaken or confused because in her mind she had actually cleared security. (Initial Decision at 5.) But even if the security personnel were mistaken or

the screening personnel arguably would be in a better position than Zoltanski to know whether checkpoint supervisors wear maroon jackets or blue jackets.

⁸ In any event, this is a red herring because Zoltanski violated Section 107.20 when she left the screening area; the fact that she unreasonably chose to ignore Shift Supervisor Badu simply makes her violation more egregious.

confused, it was necessary for Zoltanski to wait until the matter was resolved to their satisfaction. Individuals may not substitute their own judgment for that of security personnel, even if it means missing a flight or failing to meet an arriving passenger on time.

In light of the above, it was error for the ALJ to conclude that it was reasonable for Zoltanski to believe that she had cleared security. The ALJ consequently erred in dismissing the case. Instead, the preponderance of the evidence as recited by the ALJ himself indicates that Complainant successfully bore its burden of establishing that Zoltanski violated Section 107.20.

IV.

Zoltanski argues in her reply brief that a violation cannot be found because Complainant failed to offer proof of: (1) the security plan in effect on the date of the incident; and (2) the requirement that ETD testing be applied to control access to a sterile area.⁹ According to Zoltanski, these are elements of a violation of Section 107.20. (Reply Brief at 14 n.6.)

It was not necessary for Complainant to introduce the air carrier security program. The FAA special agent testified that ETD screening was a procedure in use to control access at the checkpoint on the night in question. (Tr. 40, 52, 53.) Respondent, in addition, introduced the relevant portion of the air carrier security program involving ETD screening. The FAA special agent identified Respondent's Exhibit 11 as a portion

⁹ Zoltanski also argued that Complainant should have, but failed to, produce evidence of the identity of the certificate holder responsible for security at the checkpoint. This argument must be rejected as the record indicates that United Airlines was responsible for security at that checkpoint. (Tr. 38.)

of Change 54 to the air carrier standard security program. (Tr. 266.)¹⁰ The requirement for random ETD screening is found in paragraph G.3.a(1) of Respondent's Exhibit 11.¹¹

V.

Regarding the sanction amount, Zoltanski was subject to a civil penalty of up to \$1,100. 49 U.S.C. § 49301(a) & (d); 14 C.F.R. Part 13, Subpart H. The complaint sought a civil penalty of \$250. Complainant argued in its post-hearing brief that \$250 adequately took into account the egregiousness of Zoltanski's conduct.

When the Administrator overturns an ALJ's finding of no violation, it is not necessary for the Administrator to remand the case to the ALJ for a determination of the appropriate sanction; instead, the Administrator may determine the sanction on appeal. *See In the Matter of Esau*, FAA Order No. 1991-38 at 7 n. 7 (September 4, 1991) (stating that while it would not be inappropriate to remand to the ALJ, it was more efficient for the Administrator to determine the sanction). *See also In the Matter of USAir*, FAA Order No. 1992-48 at 9 (July 22, 1992) (rejecting USAir's argument that if an ALJ's finding of no violation is reversed, the Administrator may not impose a civil penalty on appeal).

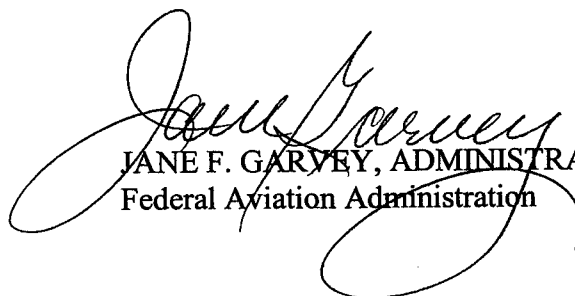
Zoltanski's behavior required a response from security personnel and airport police, diverting them from other duties. Even though Zoltanski turned out to be harmless from the security perspective, if terrorists had struck at the same time, the

¹⁰ Change 54 is dated June 28, 1999. The incident occurred on October 21, 1999. Zoltanski concedes in her reply brief that "ETD testing was instituted at Denver International Airport in June of 1998." (Reply Brief at 6.)

¹¹ Any other arguments not specifically addressed have been considered and rejected.

ability of security personnel to respond could have been compromised.¹² Under these circumstances, a civil penalty of at least \$250 is appropriate.¹³

For the foregoing reasons, the ALJ's initial decision is reversed, and a \$250 civil penalty is assessed.¹⁴


JANE F. GARVEY, ADMINISTRATOR
Federal Aviation Administration

Issued this 15th day of April, 2002

¹² See the preamble to the final rule that added Section 107.20 to the Code of Federal Regulations, which provides as follows:

There have been instances . . . in which nonpassengers have refused to be screened and intentionally entered a sterile area. Even when these persons turn out to be unarmed and have no intention of hijacking or sabotaging an aircraft, their presence requires an appropriate security response. That need to respond disrupts the orderly conduct of passenger screening and requires the diversion of security personnel from other duties. Should another incident constituting a genuine security threat occur at the same time, the ability to respond could be seriously compromised.

51 Fed. Reg. 1350, 1350 (January 10, 1986).

¹³ Under the Rules of Practice, the Administrator may not assess a civil penalty in an amount greater than that sought in the complaint. 14 C.F.R. § 13.16(h).

¹⁴ Unless Respondent files a petition for review with a Court of Appeals of the United States under 49 U.S.C. § 46110 within 60 days of service of this decision, this decision shall be considered an order assessing civil penalty. 14 C.F.R. §§ 13.16(b)(4) and 13.233(j)(2).